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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/585,902

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EXAMINER

DESAI, HEMANT

ART UNIT

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3721

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/585,902	Applicant(s) CRAWFORD ET AL.	
	Examiner Hemant M. Desai	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) 1-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 40-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/26/08 & 6/4/07</u> . | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 20-34 and 39, drawn to a container.

Group II, claim(s) 40-47, drawn to a method of providing a filled package.

2. The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the container requires a metering scoop and a lid with cavity for at least partially accommodating the scoop and a fixing means for the scoop, the process of providing the filled package does not require these features.

3. During a telephone conversation with Mr. James Parcelli on July 13, 2009 a provisional election was made without traverse to prosecute the invention of Group I, claims 40-47. Affirmation of this election must be made by applicant in replying to this Office action. Claims 20-34 and 39 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 40-41, 43-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Pajak et al. (6058682).

Pajak et al. disclose a method for providing a packaging, comprising the provision of a container provided with a base (fig. 7), the inside wall of the container consisting of a heat-sealable material (see col. 2, lines 66-67; col. 3, lines 1-10), filling the container (col. 2, lines 2-5), placing a heat-sealable film (34a, fig. 5) above the content of the container, and joining the film to the inside wall of the container, provision being made for the fitting of a lid (92, fig. 7), which meets all the claimed limitations.

Regarding claim 41, Pajak et al. disclose that the distance between the seal and a top edge of the container is between 20 mm and 50 mm. (see fig. 7).

Regarding claim 43, Pajak et al. disclose that the packaging further comprising a scoop (96, fig. 7) accommodated by the top part of the container.

Regarding claim 44, Pajak et al. disclose that the provision of a container comprises using blanks of wall material and base material as the starting materials and joining these together immediately before filling with product.

Regarding claim 45, Pajak et al. disclose that the heat-sealable film provides a gastight seal.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pajak et al. in view of Kim (2004/0178207).

Pajak et al. as explained above, discloses lid (92, fig. 7) and rim (88, fig. 5). Pajak et al. is silent about the hingedly connection of the lid with the rim. However, Kim discloses that it is known in the art to provide a lid hingedly connected with the rim (figs. 1-2). Thus, it would have been obvious to one of ordinary skill in the art to use the lid hingedly connected with the rim in the method of Pajak to keep the lid with the container and prevent the lid from getting lost as taught by Kim. Using the known technique of hingedly connected lid with the rim for protecting preventing the lid from getting lost in the method of Pajak et al. would have been obvious to one of ordinary skill. ***KSR Int'l v. Teleflex Inc., 127 S. Ct. 1727, 1740-41, 82 USPQ2d 1385, 1396 (2007).***

8. Claim 46-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pajak et al. in view of Gible (3556174).

Pajak et al., as mentioned above, disclose all the claimed limitations, except for feeding inert gas in the headspace before sealing the film to the container. However, Gible discloses that it is known in the art to feed inert gas in headspace before sealing the container to extend shelf life of the product (see col. 1, lines 20-40). Thus, it would have been obvious to one of ordinary skill in the art to feed the inert gas before sealing the container in the method of Pajak et al. to extend shelf life of the product as taught by Gible. Using the known technique of replacing headspace with the inert gas for extending shelf life of the product of Pajak et al. would have been obvious to one of

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ordinary skill. ***KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1740-41, 82 USPQ2d 1385, 1396 (2007).**

9. Claims 40-45, alternatively, are rejected under 35 U.S.C. 103(a) as being unpatentable over French Patent (FR 2747107, here onwards '107) in view of Pajak et al. (6058682).

French Patent discloses a method for providing a packaging, comprising the provision of a container provided with a base (fig. 1), filling the container with powder (15, fig. 4), placing a heat-sealable film (16, fig. 6) above the content of the container, and joining the film, provision being made for the fitting of a lid (1, fig. 6), which meets all the claimed limitations.

French Patent as mentioned above, disclose all the claimed limitations, including a heat sealable film (16) inside the container. French Patent is silent about sealing the heat sealable film inside the wall of the container, instead French Patent discloses to deform the heat sealable film (16, fig. 6) to make the room for the spoon. However, Pajak et al. disclose that it is known in the art to place a heat sealable film inside the container and seal the film with the inside wall of the container (see fig. 5) to make the room between the lid and the heat sealable film to insert the spoon (see fig. 7).

Because both Reference French Patent and Pajak et al. teach methods for placing the heat sealable film such a way to make room between the film and the lid, it would have been obvious to one skilled in the art to substitute one method for the other to achieve the predictable result of making a room between the film and lid so that the spoon can inserted in the space between the lid and the film. ***KSR Int'l v.***

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Teleflex Inc., 127 S. Ct. 1727, 1740-41, 82 USPQ2d 1385, 1396 (2007).

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M. Desai whose telephone number is (571) 272-4458. The examiner can normally be reached on 6:30 AM-5:00 PM, Mon-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hemant M Desai/
Primary Examiner, Art Unit 3721